

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Mark Jahnke and Hemlock Valley Farm, LLC
3409 State Highway 28
Milford, New York 13807

Respondents,

SPDES Permit no. NYA000553

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

DOCKET No. CWA-02-2016-3308

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency ("EPA") having filed the complaint referenced herein on December 14, 2015, against Respondents Mark Jahnke and Hemlock Valley Farm, LLC; and

Complainant and Respondents, having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CA/FO" or "Agreement") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered as follows:

II. PROCEDURAL AND FACTUAL BACKGROUND

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g).
2. The Complaint alleges that Respondents are liable for several violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, for failing to comply with the terms of the New York State Department of Environmental Conservation's ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") General Permit for Stormwater Discharges from Concentrated Animal Feeding Operations ("CAFOs"), issued under Section 402 of the Act, 33 U.S.C. § 1342, at a CAFO that Respondents own and operate.

3. The Complaint was public noticed on January 15, 2016. No public comments were received.
4. Respondents filed an answer on or before January 12, 2016.
5. Respondents stipulate that the EPA has jurisdiction over the subject matter alleged in the Complaint and waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the allegations contained in the Complaint, consent to the terms of this Agreement.
6. Respondents hereby waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

III. TERMS OF SETTLEMENT

A. Civil Penalty

1. Respondents shall pay the agreed upon amount of \$5,500.00 within thirty (30) calendar days of their receipt of the fully executed CA/FO. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00a.m. Eastern Time to be considered received that day.
2. Payment shall be made by one of the following methods:

By cashier's or certified check. A cashier's or certified check, including the name and docket number of this case, for \$5,500.00, payable to "Treasurer, United States of America," mailed to:

Regular Mail

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

By Wire Transfer: Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045

Field tag 4200 of Fedwire message should read, "D 68010727 Environmental Protection Agency."

Online: This option is available through the Department of Treasury, at www.pay.gov. Enter "sfo 1.1" in the search field. Open the form and complete the required fields.

4. Respondents shall send a copy of the check, or record of payment if made by other means, immediately following payment, to:

Christopher Saporita, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

5. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date (on the 1st late day, 30 days of interest will have accrued), at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
6. A handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
7. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if any of the payments are not received by the applicable due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondents also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
8. Respondents shall not claim the penalty as a federal or other tax deduction or credit.

9. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

IV. OTHER TERMS AND CONDITIONS

1. Failure by Respondents to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.
2. This Agreement shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
3. This Agreement constitutes a settlement by the EPA of all claims for civil penalties pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. Compliance with this Agreement shall not be a defense to any enforcement actions commenced pursuant to federal laws and regulations administered by the EPA for violations other than those alleged in the Complaint.
4. Any undersigned representative of the parties to this Agreement certifies that she or he is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
5. The provisions of this Agreement shall be binding upon Respondents, their officers, directors, agents, servants, authorized representatives and successors or assigns.
6. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Agreement.
7. Respondents consent to service upon them by delivery of a copy of this Agreement by mail or by an EPA employee other than the Headquarters or Regional Hearing Clerks.

FOR RESPONDENT:

BY:

Mark E. Jahnke
Signature

4-18-16
Date

Mark E Jahnke
Name (Please print)

Partner
Title (Please print)

FOR COMPLAINANT:


DORE LAPOSTA

Director, Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

APRIL 26, 2016
Date

V. FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b), the above Consent Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. Pursuant to 40 C.F.R. § 22.45, this Order shall be effective ten days from the date signed below.


DORE LAPOSTA

Director, Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway, New York, NY 10007

APRIL 24, 2014
Date